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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,886	04/28/2006	Bahaa Botros Seedhom	7881.24	2243

21999 7590 01/08/2009

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EXAMINER	
STEWART, JASON-DENNIS NEILKEN	
ART UNIT	PAPER NUMBER
3738	
MAIL DATE	DELIVERY MODE
01/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/577,886	SEEDHOM ET AL.	
	Examiner	Art Unit	
	JASON-DENNIS STEWART	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

The following is a Final Office action in response to communications received on 10/24/2008. Claims 1-21 have been cancelled. Claims 22-40 have been added.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 22-32 and 34, 39, and 40 are rejected under 35 U.S.C. 103(a) as being anticipated by Seedhom et al. 2003/0135209 in view of Bonutti 6,117,160 further in view of Schwartz et al. 7,163,563.

2. Regarding Claim 18, Seedhom teaches a method of repair or damaged tissue comprising forming a narrow groove into the bone, replacing damaged tissue with a bio-compatible material and anchoring the material by a retaining means (abstract). Seedhom also discloses removing damaged tissue from the groove (Fig. 21) and the groove extending into the bone (Fig. 15). Seedhom also discloses a reaming device (paragraph 27) and the depth of the groove being five times that of the tissue that is replaced (paragraph 79). However, Seedhom does not disclose the connecting element

being spaced apart from the pad in anchored position by a length of said connecting portions within the groove.

Bonutti discloses an elongate connecting portion element 38 capable of being pushed to slide into a groove and applying a downward force to connecting elements 50 (Fig. 12; col. 18, ll. 35-55). Bonutti also discloses a retaining element 32 that provides a connection via the elongate portions 72 (Fig. 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use an "array" of such connecting portions since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

It would have been obvious to modify the method of Seedhom using the connecting elements of Bonutti in order to secure body tissue to bone which may or may not have been fractured as taught by Bonutti (col. 1, ll. 25-28) to compress tissue to promote the healing process.

Seedhom in view of Bonutti discloses the invention as disclosed and discussed above. However, although implied, Seedhom in view of Bonutti does not positively disclose an array of connection elements at or near the perimeter of the pad.

Schwartz '563 illustrates tissue repair material with an array of connecting elements 15, 17 fixed at the perimeter of the pad (fig. 28).

It would have been obvious to connect the pad of Seedhom to the retaining element of Bonutti in the manner disclosed in Schwartz '314 in order to fill the gap left by a meniscectomy as disclosed by Schwartz '563 (col. 23, ll. 4-7).

3. Claims 33 and 37 are rejected under 35 U.S.C. 103(a) as being anticipated by Seedhom et al. 2003/0135209 in view of Bonutti 6,117,160 in view of Schwartz et al. 7,163,563 in further view of Schmieding 7,264,634.

4. Seedhom in view of Bonutti in view of Schwartz the invention as claimed and as discussed above. However, Seedhom in view of Bonutti in view of Schwartz does not teach the following claimed limitation: a hollow delivery device to introduce pad and retaining element into groove.

Schmieding teaches a hollow delivery device 24 (fig. 8) and a removable tool handle (paragraph 33).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify in view of Schmieding in order to repair damaged articular joint surfaces as taught by Schmieding thus giving the surgeon the ability to work in small incisions or application sites.

5. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seedhom et al. 2003/0135209 in view of Bonutti 6,117,160 in view of Schwartz et al. 7,163,563 in view of Schmieding 7,264,634 further in view of Johanson et al. 2002/0042624.

6. Seedhom in view of Bonutti in view of Schwartz in view of Schmieding teaches the invention as claimed and as discussed above. However, Seedhom in view of Bonutti in view of Schwartz in view of Schmieding does not teach following claimed limitation: a bearing coupling handle and delivery device.

Johanson teaches a bearing between the tool handle and delivery device (paragraph 54).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Seedhom in view of Bonutti in view of Schwartz in view of Schmieding further in view of Johanson in order to transplant a bone plug from a donor site to a recipient site as taught by Johanson (abstract).

Response to Arguments

7. Applicant's arguments filed 10/24/08 have been fully considered but they are not persuasive. Applicant argues that Bonutti is unrelated subject matter. Examiner respectfully disagrees. Bonutti discloses an orthopedic fixation device that uses the tension of elongate elements for apply a fixation force. In general, this is a mode of fixation similar to that of Applicant's device. The anchors 32 of Bonutti act in a similar fashion to the "pad" and "retaining element" of the Applicant's device and it is interpreted by the Examiner that one of the anchors 32 acts as the "retaining element" and the element is slidable depthwise into a groove (Fig. 12)

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON-DENNIS STEWART whose telephone number is (571)270-3080. The examiner can normally be reached on M-F (alt Fridays off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571)272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason-Dennis Stewart/
Examiner, Art Unit 3738

/Brian E Pellegrino/
Primary Examiner, Art Unit 3738